UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN STANDARD COMPANIES, INC., AMERICAN STANDARD INC., d/b/a AMERICAN STANDARD

| and | Cases | 08-CA-33352 |
|--|-------|-------------|
| | | 08-CA-33477 |
| | | 08-CA-33551 |
| | | 08-CA-33641 |
| GLASS, MOLDERS, POTTERY, PLASTICS | | 08-CA-34284 |
| & ALLIED WORKERS INTERNATIONAL UNION, | | 08-CA-34372 |
| AFL-CIO, CLC, AND ITS LOCAL UNION NO. 7A | | 08-CA-34809 |

ORDER DENYING MOTION FOR RECONSIDERATION AND REQUEST FOR REHEARING DE NOVO

On October 22, 2010, the National Labor Relations Board issued its Decision and Order in this proceeding, in which it found that the Respondent committed various violations of Section 8(a)(1) and (5) of the Act.¹

Subsequently, the Respondent petitioned for review of the Order in the United States Court of Appeals for the District of Columbia Circuit, and the Board cross-applied for enforcement.

On February 17, 2012, the D.C. Circuit denied the Respondent's

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 $^{^{1}}$ The Decision and Order, reported at 356 NLRB No. 4 (2010), incorporates by reference, with modifications, the Decision and Order reported at 352 NLRB 644 (2008).

petition for review and enforced the Order in full. American Standard Companies Inc. v. NLRB, 465 Fed. Appx. 1 (D.C. Cir. 2012). The D.C. Circuit issued its mandate in the case in April 2012.

On April 17, 2013, the Respondent filed with the Board a motion for reconsideration of the Decision and Order and request for rehearing de novo ("motion"). The Acting General Counsel filed a response, and the Respondent filed a reply.

The Respondent contends that reconsideration and rehearing are warranted in light of the D.C. Circuit's decision in *Noel Canning v. NLRB*, which issued on January 25, 2013. According to the Respondent, under the reasoning of *Noel Canning* the recess appointment of former Board Member Craig Becker—who was a member of the three—member panel that issued the October 22, 2010 Decision and Order—was constitutionally invalid. Therefore, the Respondent contends, the Board did not have a lawful guorum when it issued the Decision and Order.

The Board has delegated its authority in this proceeding to a three-member panel.

We deny the Respondent's motion. The Respondent contends that it does not seek modification of the Board's October 2010 Order, but it does seek modification of that Order because its

² 705 F.3d 490 (D.C. Cir. 2013), cert. granted 81 U.S.L.W. 3695 (U.S. June 24, 2013) (No. 12-1281).

request for de novo rehearing necessarily contemplates the eventual issuance of a new decision and order superseding the 2010 Order. The Board does not have jurisdiction to modify that As noted above, the D.C. Circuit enforced the Order in February 2012 and issued its mandate in April 2012. Under Section 10(e) of the Act, 3 we have no jurisdiction to modify an Order that has been enforced by a court of appeals because, upon the filing of the record with the court of appeals, the jurisdiction of that court is exclusive and its judgment and decree are final, subject to review only by the Supreme Court. Scepter Ingot Castings, Inc., 341 NLRB 997, 997 (2004) (citing cases), enfd. sub nom. Scepter, Inc. v. NLRB, 448 F.3d 388 (D.C. Cir. 2006).4

IT IS ORDERED that the Respondent's motion for reconsideration and request for a rehearing de novo is denied.

Dated, Washington, D.C. February 26, 2014.

³ Sec. 10(e) states, in relevant part: "Upon the filing of the record with [the United States court of appeals] the jurisdiction of the court shall be exclusive and its judgment and decree shall be final," except for potential further review by the Supreme Court. 29 U.S.C. § 160(e).

⁴ The Respondent's reliance on *Nguyen v. United States*, 539 U.S. 69 (2003), is misplaced. In Nguyen, the Supreme Court vacated two criminal defendants' convictions and remanded their cases to the Ninth Circuit "for fresh consideration," id. at 83, because the convictions had been affirmed by a judicial panel that included a non-Article III judge. No jurisdictional bar to reconsideration was present in that case. In this case, by contrast, Sec. 10(e) leaves us without jurisdiction to grant the Respondent's motion for reconsideration.

| | Philip A. Miscimarra, | Member | |
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| | Harry I. Johnson, III, | Member | |
| | Nancy Schiffer, | Member | |
| (SEAL) | NATIONAL LABOR RELATIONS | BOARD | |